

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--|---|----------------|
| GARY PLOOF, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 13-294-LPS |
| |) | |
| ROBERT M. COUPE, Commissioner |) | |
| Delaware Department of Correction; and |) | |
| DAVID PIERCE, Warden, James T. |) | |
| Vaughn Correctional Center at Smyrna, |) | |
| |) | |
| Respondents. |) | |

JOINT STATUS REPORT

The parties file this Joint Status Report pursuant to this Court's order of December 15, 2014, staying and holding these proceedings in abeyance pending final resolution of Petitioner Gary Ploof's state court proceedings and requiring the parties to file a joint status report every 90 days. (D.I. 24).

1. Petitioner Gary Ploof filed his Second Motion for Post-Conviction Relief Pursuant to Superior Court Criminal Rule 61 ("Rule 61 Motion") in the Superior Court of the State of Delaware, Kent County, on November 26, 2014.

2. On December 16, 2014, the Superior Court requested that Mr. Ploof identify by April 1, 2015, the claims in the Rule 61 motion that have not previously been adversely decided by the Delaware Supreme Court.

3. On December 18, 2014, Respondents moved to dismiss Mr. Ploof's Rule 61 Motion.

4. On April 1, 2015, after responding to the Superior Court's December 16, 2014 request, Mr. Ploof moved to stay the Superior Court proceedings pending the outcome of *Jones v.*

State, No. 67, 2015 (Del.) and *Hurst v. Florida*, 147 So.3d 435 (Fla. 2014), *cert granted*, 135 S. Ct. 1531 (U.S. Mar. 9. 2015) (No. 14-7505). On April 16, 2015, the Superior Court stayed proceedings in Mr. Ploof's case pending the outcomes of *Jones* and *Hurst*.

5. On November 4, 2015, the Delaware Supreme Court decided *Jones v. State*, 2015 WL 6746873 (Del. Nov. 4, 2015). On January 12, 2016, the United States Supreme Court decided *Hurst v. Florida*, 136 S. Ct. 616 (2016).

6. On January 28, 2016, the Delaware Supreme Court certified five questions of law, arising from the potential impact of *Hurst v. Florida* and *Kansas v. Carr*, 136 S. Ct. 663 (2016) on 11 *Del. C.* § 4209, for determination. Order Accepting Certified Questions, *Rauf v. State*, No. 39, 2016 (Del. Jan. 28, 2016). On August 2, 2016, the Delaware Supreme Court answered those certified questions, holding the statutory scheme under which Mr. Ploof was sentenced to be unconstitutional. *Rauf v. State*, 145 A.3d 430 (Del. 2016).

7. On December 15, 2016, the Delaware Supreme Court found, in *Powell v. State*, 2016 WL 7243546 (Del. Dec. 15, 2016), that its decision in *Rauf*, should have retroactive application to a defendant already under the sentence of death.

8. On April 13, 2017, the Delaware Superior Court vacated Mr. Ploof's death sentence and sentenced him to life in prison.

9. On May 23, 2017, Mr. Ploof filed an amended Rule 61 motion.

10. On June 14, 2017, the State filed a second motion for summary dismissal.

11. On June 20, 2017, Mr. Ploof's case was reassigned from Judge Robert B. Young to Judge Richard R. Cooch.

12. On July 31, 2017, Mr. Ploof filed an opposition to the State's motion for summary dismissal. The State, on August 23, 2017, filed a reply to Mr. Ploof's opposition.

13. On September 22, 2017, the Superior Court requested that Mr. Ploof set forth his position as to the legal effect of the Delaware Supreme Court's decision in *Coles v. State*, 2017 WL 3259697 (Del. July 31, 2017). On October 3, 2017, Mr. Ploof responded, setting forth his position.

14. On December 28, 2017, the Superior Court granted the State's motion for summary dismissal.

15. On January 24, 2018, Mr. Ploof appealed the Superior Court's order to the Delaware Supreme Court. Mr. Ploof filed his Opening Brief on April 12, 2018. The State filed its Answering Brief on May 7, 2018 and Mr. Ploof filed his Reply Brief on May 22, 2018.

16. Mr. Ploof's case therefore remains pending in state court.

Respectfully submitted,

/s/ Tiffani D. Hurst

Tiffani D. Hurst (MA No. 629858)

Tiffani_Hurst@fd.org

First Assistant Federal Defender

/s/ Stephen L. Marley

Stephen L. Marley (PA No. 54946)

Stephen_Marley@fd.org

Assistant Federal Public Defender

Office of the Federal Public Defender

800 North King Street, Suite 200

Wilmington, DE 19801

(302) 572-6010

Counsel for Petitioner

Dated: August 27, 2018

/s/ Maria T. Knoll

Maria T. Knoll (No. 3425)

maria.knoll@state.de.us

/s/ Brian L. Arban

Brian L. Arban (No. 4511)

Brian.arban@state.de.us

Carvel State Office Building

Deputy Attorneys General

820 North French Street, 7th Floor

Wilmington, DE 19801

(302) 577-8500

Counsel for Respondents